

In the Matter of Merchant Mariner's Document No. Z-767264 and all other Licenses, Certificates and Documents

Issued to: ROBERTO ALVEREZ GARCES

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

932

ROBERTO ALVEREZ GARCES

This appeal has been taken in accordance with Title 46 United States Code 239a-b (Public Law 500, 83rd Congress, 68 Stat. 484) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 31 July 1956, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z767264 issued to Roberto Alvarez Garces upon finding him guilty of the charge of conviction of a narcotic law violation based upon a specification alleging in substance that, on 27 October 1955, he was convicted by the Court of Special Sessions of the City of New York, County of New York, a court of record, for violation of the narcotic drug laws of the State of New York.

At the hearing, the Examiner informed Appellant that the only possible results of the hearing would be revocation of his document or dismissal of the charge and specification. Appellant was given a full explanation of the nature of the proceedings and the rights to which he was entitled. Appellant was represented by counsel of his own choice. The Examiner entered a plea of "not guilty" on behalf of Appellant since he refused to enter a plea. A Spanish interpreter was present for the benefit of Appellant.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence two documents showing that Appellant had been convicted of a violation of the narcotic drug laws of the State of New York.

In defense, Appellant offered in evidence his sworn testimony and the testimony of his sister. Appellant testified that he had tried narcotics about two years ago but never has been a habitual user. The rest of his testimony is reiterated on appeal. Appellant's sister stated that he did not use drugs.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and specification had been proved. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-767264 and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 20 October 1955, Appellant entered a plea of guilty before the Court of Special Sessions of the City of New York, County of New York, a court of record, to the charge of unlawful possession of a hypodermic syringe and needle in New York City on or about 17 October 1955. Appellant was convicted and, on 27 October 1955, he was sentenced to sixty days in the workhouse for this offense.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant claims that he found a package on the sidewalk but that he was immediately arrested by the police before the package was opened and found to contain narcotics and articles used for the injection of drugs.

Appellant contends that the conviction was illegal because he was induced by his lawyer to plead guilty without having knowledge as to what the charge was or having had the charge read to him in Spanish.

Since this excessive order is a hardship on Appellant and his family, it is respectfully requested that the revocation be set aside or that Appellant be granted a new hearing.

APPEARANCE: Morris Levy, Esquire, of New York City, of Counsel

OPINION

It is not my function to question a conviction by a court of record which, on its face, is perfectly valid. Proof of conviction by a court of record, as alleged in the present specification, constitutes proof of the charge of "conviction of a narcotic law violation" in a proceeding conducted under Public Law 500 (46 U.S.C. 239a-b). Since this is the gravamen of the Government's case, the proof of conviction is conclusive and it is not subject to collateral attack in this proceeding. Hence, I agree with the Examiner's statement that the conviction in this case may not be collaterally attacked. Unless the conviction is considered to be conclusive, an anomalous situation could be presented where an Examiner finds the charge (conviction of a narcotic law violation) proved but dismisses the case against a person charged upon acceptance of his testimony that he is innocent regardless of the conviction. Such a dismissal would be clearly inconsistent with the wording of Public Law 500.

Any prior rulings inconsistent with the foregoing interpretation of the Public Law 500 are hereby superseded.

For the above reasons, Appellant's contention that his conviction was illegal must be rejected.

In addition, it is noted that Appellant's admitted prior use of narcotics materially weakens the effect of his protestations of innocence in this case.

Appellant's plea of guilty before the New York court was an admission of facts which he now denies. Courts are careful that a plea of guilty shall not be accepted unless made voluntarily after proper advice and with full understanding of the possible consequences; Appellant's recourse in this case was to make application to the court to be permitted to withdraw his plea of guilty if it had been unfairly obtained or given through ignorance. Kercheval v. United States (1927), 274 U.S. 220, 223-4. The documents in evidence do not indicate that Appellant was deprived of any of his rights before the court.

Regardless of the resultant hardship to Appellant, the order of revocation will be sustained. On a finding of guilty of a charge brought under 46 U.S.C. 239a-b, this is the only order which an Examiner may enter. See also 46 CFR 137.04-10 which emphasizes this mandatory requirement of the statute.

ORDER

The order of the Examiner dated at New York, New York, on 31 July 1956, is ~~is~~ **AFFIRMED**.

J. A. Hirshfreed
Rear Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 14th day of November, 1956.